

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JORGE GARCIA,

Petitioner,

v.

ROBERT HOREL,

Respondent.

No. C 07-06012 JSW

ORDER TO SHOW CAUSE

Petitioner, Jorge Garcia, a state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

BACKGROUND

Petitioner was convicted by a jury of premeditated attempted murder (Penal Code § 187(a)/664), assault with a firearm (Penal Code § 245(a)(2)), and various firearms and gang enhancements. Petitioner was sentenced to twenty-five years to life in state prison, and currently is incarcerated at Pelican Bay State Prison.

LEGAL CLAIMS

Petitioner seeks habeas relief alleging that his conviction was unlawfully and unconstitutionally imposed in violation of his rights under the Fifth and Fourteenth Amendments to the United States Constitution because the prosecutor “referred to matters during closing argument that were outside the record” and “misrepresented evidence that had been presented during trial.” Petitioner also alleges that he was deprived of his Sixth Amendment right to the effective assistance of counsel, because his trial counsel did not object

1 to the improper argument, request admonitions, or move for a new trial. Petitioner also
2 contends that the cumulative effects of these errors deprived him of the right to a fair trial, in
3 violation of his Fifth and Fourteenth Amendment rights to due process.

4 Liberally construed, the claims appear potentially colorable under 28 U.S.C. § 2254 and
5 merit an answer from Respondents.

6 **CONCLUSION**

7 For the foregoing reasons and for good cause shown:

- 8 1. Petitioner shall serve by certified mail a copy of this Order and the petition and
9 all attachments thereto upon Respondents.
- 10 2. Respondents shall file with the Court and serve on Petitioner, within 60 days of
11 the date of this Order, an answer conforming in all respects to Rule 5 of the
12 Rules Governing Section 2254 Cases, showing cause why a writ of habeas
13 corpus should not be issued. Respondent shall file with the answer and serve on
14 Petitioner a copy of all portions of the administrative record that are relevant to a
15 determination of the issues presented by the petition.
- 16 3. If Petitioner wishes to respond to the answer, he shall do so by filing a traverse
17 with the Court and serving it on Respondents within 30 days of his receipt of the
18 answer.

19 **IT IS SO ORDERED.**

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21 Dated: November 29, 2007


22 **JEFFREY S. WHITE**
23 **UNITED STATES DISTRICT JUDGE**
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